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FILED

JAN 23 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

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JAN 21 2004

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
WESTERN DIVISION

CATHOLIC SOCIAL SERVICES, INC.,—
IMMIGRATION PROGRAM, ET AL.,

Plaintiffs,

v.

TOM RIDGE, SECRETARY
U.S. DEPARTMENT OF HOMELAND
SECURITY, ET AL.,

Defendants.

Case No. Civ S-86-1343-LKK

ORDER APPROVING
SETTLEMENT OF CLASS ACTION

[Proposed]

Hearing: January 23, 2004.
Time: 10:00 a.m.

1 This matter is before the Court pursuant to the parties' Joint Motion to Approve
2 Settlement of Class Action. The Court has read and considered the parties' motion, the
3 comments and objections of putative class members to the proposed settlement, and the
4 parties' joint response to those objections. The Court finds that the proposed settlement
5 fully and fairly resolves the claims of class members herein and that it should
6 accordingly be approved.

7 Rule 23(e) of the Federal Rules of Civil Procedure provides: "A class action shall
8 not be dismissed or compromised without the approval of the court, and notice of the
9 proposed dismissal or compromise shall be given to all members of the class in such
10 manner as the court directs."

11 "Although Rule 23(e) is silent respecting the standard by which a proposed
12 settlement is to be evaluated, the universally applied standard is whether the settlement
13 is fundamentally fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*
14 *of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983). It is the
15 settlement taken as a whole, rather than the individual component parts, that must be
16 examined for overall fairness. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
17 1992), *cert. denied*, 506 U.S. 953 (1992). There is a "strong judicial policy that favors
18 settlements, particularly where complex class action litigation is concerned." *Id.*

19 Applying these standards to the settlement before it, the Court begins by noting
20 that this matter has been vigorously litigated for over 17 years. There is no suggestion of
21 collusion between the negotiating parties to the detriment of absent class members. See
22 *Officers for Justice, supra*, 688 F.2d at 625 ("the court's intrusion upon what is otherwise a
23 private consensual agreement negotiated between the parties to a lawsuit must be
24 limited to the extent necessary to reach a reasoned judgment that the agreement is not
25 the product of fraud or overreaching by, or collusion between, the negotiating
26 parties...").

27 The parties have notified the class of their settlement in accordance with the
28

1 Court's order. See Order re: Settlement of Class Action, September 23, 2003. The period
2 to object to the settlement ended on December 29, 2003. *Id.* Though the precise size of the
3 certified class is unknown, it undoubtedly comprises thousands of class members. As of
4 January 12, 2004, two putative class members Mohammad Z. Shah and Carlos Aragon
5 Hurtado, have objected to or commented on the settlement.

6 Mr. Hurtado does not object to the settlement, but instead writes that the
7 Immigration and Naturalization Service (INS) denied him legalization under the IRCA's
8 Special Agricultural Worker Program (SAW). See 8 U.S.C. § 1160. For the reasons set out
9 in the parties' Joint Report re: Objections to Settlement of Class Action, filed January 20,
10 2004, the Court finds that nothing in Mr. Hurtado's comment warrants the Court's
11 disapproving the settlement.

12 Mr. Shah asserts, among other things, that he was refused entry into the United
13 States when he returned from a trip abroad in 1998 despite being granted advance
14 parole. He objects that the settlement will not benefit individuals in his circumstance: *i.e.*,
15 persons who are not now present in the United States despite having been granted
16 advance parole.

17 The parties disagree over whether individuals in Mr. Shah's circumstances will
18 benefit under the settlement: Plaintiffs contend that Mr. Shah and those similarly
19 situated will be entitled to apply for class membership pursuant to the settlement and, if
20 they establish class membership, to pursue their applications for legalization under 8
21 U.S.C. § 1255a. Defendants assert that persons outside the United States are also outside
22 the scope of the settlement. The Court finds it unnecessary to resolve this disagreement.

23 Mr. Shah states that he departed the United States pursuant to advance parole,
24 and if this is so he could arguably avail himself of the procedure set out in 8 C.F.R. §
25 245a.2(m)¹ to seek readmission to the United States. See *Reno v. Catholic Soc. Servs.*, 509

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28 ¹ 8 C.F.R. § 245a.2(m)(1) provides:

1 U.S. 43, 67 n.29 (1993) (in this case class members "applied" for legalization at the time
2 they were front-desked or constructively front-desked). Should defendants readmit him,
3 then their argument for denying him the benefits of the settlement would be moot.
4 Further, in any settlement as complex as that before the Court, there is the potential for
5 differing interpretation. The settlement itself anticipates such disagreements and
6 establishes procedures for their resolution. See Settlement ¶¶ 8-9, 18.

7 At this juncture, Mr. Shah does not appear to have asserted his rights, if any,
8 under 8 C.F.R. § 245a.2(m); he has not yet applied for class membership; defendants
9 have not yet denied him benefits under the settlement; nor has he yet availed himself of
10 the settlement's dispute resolution procedures. The claims of Mr. Shah and those
11 similarly situated will be fit for judicial resolution when and if defendants deny them the
12 benefits of the settlement because they are outside the United States. It is neither
13 necessary nor appropriate that the Court resolve such potential claims now. *Cf. Reno v.*
14 *Catholic Social Services*, 509 U.S. 43, 58-59 & n.19 ("[A] class member's claim would ripen
15 only once he took the affirmative steps that he could take before the INS blocked his
16 path by applying the regulation to him.").

17 Yet even assuming, *arguendo*, that Mr. Shah were excluded from its coverage, a
18 question this Court does not resolve at this time, the settlement would nevertheless
19 satisfy Rule 23. As has been said, the test under Rule 23 is whether the settlement *taken as*
20 *a whole*, rather than the individual component parts, is fair. *Class Plaintiffs v. City of*
21 *Seattle*, *supra*, 955 F.2d at 1276. "Ultimately, the district court's determination is nothing
22 more than 'an amalgam of delicate balancing, gross approximations and rough justice.'"
23

24
25 During the time period from the date that an alien's application establishing
26 *prima facie* eligibility for temporary resident status is reviewed at a Service
27 Legalization Office and the date status as a temporary resident is granted, the
28 alien applicant can only be readmitted to the United States provided his or her
departure was authorized under the Service's advance parole provisions
contained in § 212.5(f) of this chapter.

1 *Officers for Justice, supra*, 688 F.2d at 625 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d
2 448, 468 (2d Cir. 1974)).

3 Were the Court to disapprove the settlement because defendants may oppose the
4 claims of what the parties agree is a minuscule number of putative class members who
5 are no longer in the United States, thousands of class members who reside in the United
6 States at the time they apply for class membership and have a vital interest in the
7 settlement would be denied crucial benefits and compelled to continue a 17-year
8 litigation to an uncertain conclusion. Weighing these relative costs and benefits, the
9 settlement clearly meets the requirements of Rule 23.

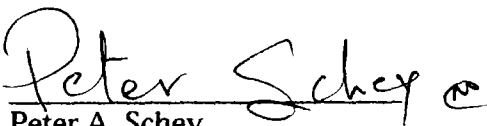
10 Based on the foregoing, and for the reasons set forth in the parties' Joint Motion to
11 Approve Settlement of Class Action, the Court finds that the settlement is fundamentally
12 fair, adequate and reasonable. Accordingly,

13 IT IS HEREBY ORDERED that the settlement is approved.

14
15 Dated: 1/23, 2004.

16 
17 United States District Judge

18 Presented by:

19
20 


21 Peter A. Schey
22 Carlos R. Holguin
23 Counsel for plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2004, a copy of the foregoing
[Proposed] Order was served on counsel of record for Defendants via facsimile and U.S.
mail, first class postage prepaid, to the following address:

Earle Wilson
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044


Peter Schey

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United States District Court
for the
Eastern District of California
January 23, 2004

* * CERTIFICATE OF SERVICE * *

2:86-cv-01343

Catholic Social Svc

v.

Orantes

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on January 23, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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Deputy Clerk